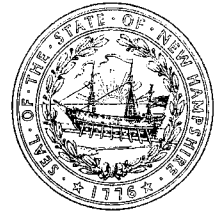




The State of New Hampshire
Department of Environmental Services
Waste Management Council

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September 18, 2006

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Re: Docket No. 05-09 WMC – Combined Appeal of Regenesys Corporation, REACH, and CFNH

Please find enclosed the NH Waste Management Council's written *Decision & Order on Reconsideration* relative to the above-captioned appeal. If you have any questions, please contact me at (603) 271-6072 or by e-mail at msclafani@des.state.nh.us.

Sincerely,

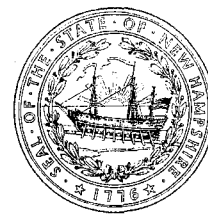
COPY
Michael P. Sclafani,
Council Appeals Clerk

cc: NH Waste Management Council
Michael P. Nolin, Commissioner, DES
Anthony P. Giunta, P.G., Director, DES WMD
Mike Guilfooy, DES WMD
DES Public Information Officer



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STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL

Docket No. 05-09 WMC

Combined Appeal of:
Regenesi Corporation ("Regenesi")
Residents Environmental Action Committee for Health ("REACH")
Citizens for a Future New Hampshire ("CFNH")

In Re: License Action No. NPLA 04-010
Solid Waste Permit No. DES-SW-SP-002

Decision & Order on Reconsideration

Background

On November 22, 2004, the Department of Environmental Services, Waste Management Division ("DES") issued Notice of Proposed License Action No. NPLA 04-010 ("NPLA") announcing its intent to revoke Solid Waste Permit No. DES-SW-SP-002 (the "Permit").

On March 4, 2005 DES filed an Amended Notice of Proposed License Action ("ANPLA") to revoke the Permit held by Regenesi Corporation ("Regenesi"), a successor-in-interest to the original permittee, Bio Energy Corporation. The permit was issued under the provisions of RSA 149-M and NH Code of Administrative Rules Env-Wm100-300 and 2100 (the "Solid Waste Rules"). The permit authorizes the storage and use of wood fuel derived from construction and demolition debris, a solid waste, at an electric generating facility in Hopkinton, New Hampshire.

State solid waste laws and rules restrict the granting of a permit to a business entity if any of its officers, directors, partners, key employees or principal equity holders have been convicted of a felony within 5 years of the application date. DES is also authorized to deny or revoke a permit if an applicant or permittee fails to demonstrate sufficient "reliability, expertise, integrity, and competence to operate a solid waste facility."

The ANPLA alleged that William Dell’Orfano, a principal of both Bio Energy Corporation and Regenesis, made a false or misleading statement when he certified on December 2, 2002 that none of Bio Energy Corporation’s officers or directors had been convicted of a felony in the 5 years prior to the application to transfer the Permit to Regenesis. Another corporate owner of Bio Energy Corporation, Anthony DiNapoli, had been convicted of a felony on March 25, 2002. The ANPLA asserted that Mr. Dell’Orfano’s allegedly false or misleading certification, and other false or misleading statements and omissions made to DES during the course of the permit proceedings, demonstrated that Regenesis does not have sufficient reliability and integrity to operate a solid waste facility. The ANPLA contended that these deficiencies could not be corrected and proposed that the Permit be revoked. If the permit was not revoked, the ANPLA alternatively sought that Regenesis show cause why the 2003 permit modification proceeding should not be re-opened to address alleged inadequacies in the notices provided to abutting property owners.

Regenesix objected to the proposed permit revocation and denied that it had wrongfully withheld information about the conviction or that it had in any way violated or failed to comply with the solid waste statutes and rules. In particular, Regenesix asserted that Mr. Dell’Orfano’s certification that no corporate principals had been convicted of a felony was true because Mr. DiNapoli sold his interest in Bio Energy Corporation before the December 2002 transfer application that contained the certification.

In addition to DES and Regenesix, the Town of Hopkinton and two citizens’ groups, Residents Environmental Action Committee for Health (“REACH”) and Citizens for a Future New Hampshire (“CFNH”), participated as interveners in this matter. The interveners sought a broad inquiry into the conduct of Bio Energy Corporation, Bio Energy LLC and Regenesix with respect to the Facility. In a Decision on Pending Motions dated February 17, 2005, the scope of this proceeding was limited to matters “relevant and material to the facts summarized in Section III of the NPLA [later to become the ANPLA], and to the violations and proposed actions described in Sections IV and V.”

A 3-day adjudicative hearing was conducted on April 18 to April 20, 2005. Assistant Commissioner Michael J. Walls was assigned to be the Hearings/Presiding Officer throughout the adjudicative process. The issues addressed at the hearing and in the final decision in this matter were:

1. Whether William Dell'Orfano made a false or misleading statement when he certified in December of 2002 that none of Bio Energy's officers or directors had been convicted of a felony in the five years prior to the application for a permit transfer.
2. Whether good cause exists as provided in Env-Wm 306.05 to revoke the permit based on the failure to disclose a felony conviction of a corporate principal.
3. Whether Mr. Dell'Orfano provided misleading or incomplete information to DES by failing to disclose that Bio Energy Corporation had been dissolved in the 2002 transfer application.
4. Whether good cause exists as provided in Env-Wm 306.05, to revoke the permit based on the failure to disclose the dissolution of Bio Energy Corporation.
5. Whether the alleged failures to disclose the felony conviction or the dissolution of Bio Energy Corporation demonstrate that Regenesis Corporation lacks the reliability and integrity to operate a solid waste facility.
6. Whether good cause exists as provided in Env-Wm 306.05 to revoke the permit based on the permittee's lack of reliability and integrity.

7. Whether the required notices to abutters in the 2002 transfer proceeding and the 2003 permit modification proceeding complied with Env-Wm 303.05 (d), and, if not, whether either of these prior proceedings should be reopened.

On June 23, 2005 the Hearings Officer issued a Notice of Decision which he found that there is good cause to revoke the permit.

On July 25, 2005 Regenesis, REACH, and CFNH each filed appeals with the NH Waste Management Council (“the Council”) appealing certain rulings in the June 23, 2005 final decision. Regenesis was represented by Attorney Edward A. Haffer and Attorney Robert P. Cheney. REACH was represented by Attorney John E. Friberg and Attorney Ronald J. Lajoie. CFNH was represented by Attorney Jeffrey L. Roelofs.

On August 5, 2005 Attorney Jennifer J. Patterson filed an Appearance with the Council on behalf of DES.

On August 17, 2005 Attorney Barry Needleman filed an Appearance and a Petition to Intervene with the Council on behalf of the Town of Hopkinton (“Hopkinton”).

On September 21, 2005 Regenesis filed a Motion for Interlocutory Transfer Without Ruling to the Supreme Court.

On September 22, 2005 the Council voted to accept the Regenesis Appeal and combine the Regenesis Appeal, the REACH appeal, and the CFNH appeal for administrative purposes, and to refer to the appeal(s) as Docket No. 05-09 WMC – Regenesis Corporation Appeal. The Council recognized Regenesis and DES as principal parties to the appeal. The Council decided to convene a Motions Hearing to determine the intervener status of the Town of Hopkinton, CFNH, and REACH, and to hear argument relative to the Motion for Interlocutory Appeal Without Ruling to the Supreme Court.

On September 30, 2005 Hopkinton, CFNH, and REACH filed objections to the Motion for Interlocutory Appeal Without Ruling to the Supreme Court.

On November 4, 2005 the Council heard arguments from CFNH, REACH, and the Town of Hopkinton relative to their standing to participate in the Appeal. After arguments the Council granted Intervener Status to CFNH, REACH, and the Town of Hopkinton. The Council also heard arguments from all parties relative to Regenesis' Motion for Interlocutory Transfer Without Ruling to the Supreme Court. After arguments the Council denied the motion.

On November 11, 2005 a Prehearing Conference was held. The parties agreed rather than offering a full evidentiary hearing with witnesses they would instead offer presentation and argument to the Council. The Appeal Hearing was scheduled to take place on January 26, 2006.

On January 26, 2006, following proper notice to all parties, the Council held an adjudicatory hearing on the subject appeal in accordance with RSA 541-A:31-38 and the Waste Management Council's procedural rules, NH Code of Administrative Rules Env-Wm 200. The Council listened to presentation and argument by Regenesis, DES, CFNH, REACH, and Hopkinton. The parties were allowed adequate time for an opening statement, presentations, rebuttal, and closing statements. Immediately following the appeal hearing, the Council decided to deliberate at a later date.

On February 23, 2006 the Council met to deliberate this appeal. At the conclusion of a lengthy deliberation session the Council voted 6-3 to DENY the appeal.

On May 30, 2006 the Council issued a written Decision & Order to deny the appeal. In its decision, the Council found and concluded that it agrees with Assistant Commissioner Walls' conclusions dated June 23, 2005. However, the Council found that the certification language for

“existing” permittee per RSA 149-M:9 is limited to existing officers, directors or partners not past officers, directors or partners.

In accordance with New Hampshire Code of Administrative Rules Env-WMC 205.16, any party whose rights are directly and adversely affected by a decision of the Council may file with the Council a Motion for Rehearing within 20 days of the date the written decision is issued.

On June 16, 2006 Regenesis filed a Motion for Rehearing with the Council seeking (1) Reversal of the revocation of permit; (2) Reversal of the ruling on the dissolution issue; and (3) A ruling to the following effect: “To the extent that the Hearing Officer’s Decision incorporates findings and rulings that were unnecessary to the determination of the ‘Violations Alleged,’ those findings and rulings are vacated, and have no precedential or binding effect.”

On June 19, 2006 DES filed a Motion for Clarification or in the Alternative, Reconsideration with the Council asking that the Council clarify or strike the final sentence of its “Findings and Conclusions” section of the written decision.

On June 19, 2006 CFNH filed a Motion for Rehearing with the Council asking that the Council (1) Declare that Regenesis’ officials lack sufficient reliability and integrity to operate a solid waste facility, pursuant to RSA 149-M:9, IX(a) – constituting an additional, independent ground for revocation of the Permit pursuant to Env-Wm 306.05(c) with preclusive effect upon further applications, based on the evidence presented in the underlying proceedings or, if more us needed, on additional relevant evidence (after any necessary discovery) that Presiding Officer Walls erroneously precluded CFNH from discovering and presenting in the underlying proceedings; (2) Declare that Bio Energy and/or Regenesis did not provide proper public notice pursuant to Env-Wm 303.05(d) in connection with their solid waste permit application when they sent notices to close corporate affiliates and not to abutters to such corporate affiliates; (3) Amend the decision in accordance declarations contained in the motion and revoke the permit on the additional grounds that Regenesis’ officials lack sufficient reliability and integrity to operate

a solid waste facility; and (4) Amend the Decision to clarify or rescind its finding that the certification requirements under RSA 149-M:9 only applies to “existing” officers, at least in the facts of this case.

On June 19, 2006 REACH filed a Motion for Clarification and/or Reconsideration with the Council asking that the Council (1) Clarify and/or otherwise reconsider the portion of its Decision and Order regarding the requirements of RSA 149-M:9; and (2) Reaffirm the remainder of its Decision and Order consistent with the Decision of the Hearing Officer and/or otherwise deny Respondent’s Appeal.

At its regular monthly business meeting on August 17, 2006, the Council took up the Regenesis Motion for Rehearing, the DES Motion for Clarification or in the Alternative Reconsideration, the CFNH Motion for Rehearing, and the REACH Motion for Clarification and/or Reconsideration. After considerable discussion and in accordance with Env-WMC 205.16(d) the Council voted to dismiss all four motions. The Council vote was 8-0 to dismiss the Regenesis Motion for Rehearing. The Council vote was 6-1 with one abstention to dismiss the DES Motion for Clarification or in the Alternative Reconsideration. The Council vote was 6-1 with one abstention to dismiss the CFNH Motion for Rehearing. The Council vote was 6-1 with one abstention to dismiss the REACH Motion for Clarification and/or Reconsideration.

Findings and Conclusions

The Council finds that Hearing Officer Walls issued a detailed and lengthy 92-page written decision to revoke the permit in question.

The Council finds that in the decision to revoke the permit, Hearings Officer Walls made extensive findings and conclusions in support of the decision to revoke.

The Council upholds its pervious finding and conclusion that the certification language for “existing” permittee per RSA 149-M:9 is limited to existing officers, directors or partners not past officers, directors or partners.

The council finds and concludes that it agrees with all other findings and conclusions reached by Hearing Officer Walls and that these, even absent the certification language finding, are sufficient to support the decision to revoke the permit.

The Council further finds and concludes that this decision on reconsideration is consistent with, and reflective of, discussions and deliberations relative to the appeal deliberations and subsequent discussions on the four reconsideration/rehearing motions at issue in this decision.

Order

Regenesis Motion for Rehearing is **DISMISSED**.

DES Motion for Clarification or in the Alternative Reconsideration is **DISMISSED**.

CFNH Motion for Rehearing is **DISMISSED**.

REACH Motion for Clarification and/or Reconsideration is **DISMISSED**.

Reconsideration

Pursuant to RSA 541:6, within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the Supreme Court.

So Ordered for the Council:

COPY

Michael P. Sclafani, Appeals Clerk

September 18, 2006